Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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This issue contains

T.D. 78–385 through 78–393
C.A.D. 1212
Notice

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 78-285)

Foreign Currencies—Daily Rates for Countries Not On Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

People's Republic of China yuan:	
October 2, 1978	$0.590458
October 3, 1978	.590458
October 4, 1978	.592242
October 5, 1978	.595203
October 6, 1978	.595203
Hong Kong dollar:	
October 2, 1978	$0.2113
October 3, 1978	.2116
October 4, 1978	.2116
October 5, 1978	.2113¼
October 6, 1978	.2110
Iran rial:	
October 2-6, 1978	$0.0141½
Philippines peso:	
October 2-6, 1978	$0.1360
Singapore dollar:	
October 2, 1978	$0.4488
October 3, 1978	.4496

Singapore dollar:—Con.	
October 4, 1978	:4525
October 5, 1978	:4530
October 6, 1978	:4528
Thailand baht (tical):	
October 2–6, 1978	$0.0495

(LIQ-3-O:D:S)

Date: October 12, 1978.

WILLIAM D. SLYNE,
(For Ben L. Irvin, Acting Director,
Duty Assessment Division).

(T.D. 78-386)

Rates of Duty—Temporary Modifications

Presidential Proclamation 4600 concerning temporary modifications to the appendix of the Tariff Schedules of the United States

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice reproduces the annexes to Presidential Proclamation 4600 which implements a recent trade agreement with India by lowering the rates of duty on certain articles. Part 2 of the appendix to the Tariff Schedules of the United States is modified to reflect the new rates of duty.

EFFECTIVE DATE: The new rates of duty became effective as to articles entered, or withdrawn from warehouse, for consumption on or after October 1, 1978.

FOR FURTHER INFORMATION CONTACT: John Valentine, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–5786.

SUPPLEMENTARY INFORMATION: On July 26, 1978, the President, through his representative, entered a trade agreement with India under the authority of section 101(a) of the Trade Act of 1974 (19 U.S.C. 2111(a)). Under this trade agreement the United States would temporarily modify the rates of duty on certain products in exchange for certain measures benefiting U.S. exports to India.

Presidential Proclamation 4600, dated September 21, 1978 (43 F.R. 43285, Sept. 25, 1978), implemented the trade agreement with India by modifying the appendix to the Tariff Schedules of the United States (TSUS). Annex I to Proclamation 4600 was inserted as new subpart C of part 2 of the appendix, TSUS, and contains temporary

modifications for tariff items 106.60, 147.96, 305.20, 305.22. 305.28, 335.50, 347.30. 360.15, 360.35, 385.45, 385.95, 435.70, 516.71, 516.76, and 516.94, TSUS. The staged rate reductions contained in annex II to Proclamation 4600 were inserted in column 1 for the appropriate items modified by annex I.

The temporary modifications to the appendix of the TSUS became effective as to articles entered, or withdrawn from warehouse, for consumption on or after October 1, 1978, and continue in force until superseded by permanent modifications to the appropriate provisions in schedule 1, 3, 4, or 5 of the TSUS proclaimed pursuant to multilateral negotiations under the General Agreement on Tariffs and Trade.

Annex I and annex II are reproduced below.

(055622)

Dated: Oct. 16, 1978.

DONALD W. LEWIS,
Acting Assistant Commissioner,
Regulations and Rulings.

Proclamation 4600 September 21, 1978

Temporary Staged Reduction of Rates of Duty on Certain Products

By the President of the United States of America

A Proclamation

ANNEX I

Part 2 of the Appendix to the Tariff Schedules of the United States is modified by inserting the following new subpart C immediately following subpart B:

Item	Article	Rates of Duty	
		1	2
	Subpart C.—Reduced Duties, Pursuant to Temporary Trade Agreements		
946.02	Frog meat (except meat offal), fresh, chilled, or frozen (provided for in item 106.60)	Free	No change
946.14	Mangoes, prepared or preserved (provided for in item 147.96)	2.3¢ per lb.	No change
	Yarns and roving, of jute:		
	Singles:		

Item	Article	Rates of Duty	
		1	2
946.42	Measuring under 720 yards per pound (provided for in item 305.20)	4.5% ad val.	No change
946.44	Measuring 720 yards or over per pound (provided for in item 305.22)	8% ad val.	No change
946.46	Plied, measuring under 720 yards per pound (provided for in item 305.28)	7% ad val.	No change
946.50	Woven fabrics, wholly of jute, bleached, colored, or flame resistant (provided for in item 335.50)	1% ad val.	No change
946.52	Webbing of jute (provided for in item 347.30)	11% ad val.	No change
	Floor coverings of pile or tufted construction, of textile materials, in which the pile was inserted or knotted during weaving or knitting:		
	With pile hand-inserted or hand-knotted:		
	With not over 50 percent by weight of the pile being hair of the alpaca, guanaco, huarizo, llama, misti, suri, or any combination of these hairs:		
946.54	Valued over 66⅔ cents per square foot, with not over 160 knots per square inch (provided for in item 360.15)	8% ad val.	No change
946.56	With pile not hand-inserted and not hand-knotted, of coir (provided for in item 360.35)	3.6¢ per sq. ft.	No change
946.58	Bags and sacks, or other shipping containers, of vegetable fibers, except cotton, not bleached, not colored, and not rendered nonflammable (provided for in item 385.45)	Free	No change
946.60	Pile matting and pile mats, of coir (not including floor coverings) (provided for in item 385.95)	4.2¢ per sq. ft.	No change
946.62	Opium (provided for in item 435.70)	Free	No change
	Mica, cut or stamped to dimensions, shape or form, whether or not perforated or indented, and whether or not dedicated to a specific use:		

Item	Article	Rates of Duty	
		1	2
946.64	Not over 0.006 inch in thickness (provided for in item 516.71)	8% ad val.	No change
946.66	Over 0.006 inch in thickness and perforated or indented (provided for in item 516.76)	9.5% ad val.	No change
946.68	Articles not specially provided for, of mica (provided for in item 516.94)	9.5% ad val.	No change

ANNEX II

Staged-rate Modification of the Tariff Schedules of the United States

Each rate in the following table, for an item in the Appendix to the Tariff Schedules of the United States (TSUS) identified therein, is inserted in column numbered I in such item, effective for articles provided for therein which are entered, or withdrawn from warehouse, for consumption on and after the date at the head of the column in which such rate is set forth and, except for rates in the final column, such rate shall be superseded by the rate for that item in the immediately following column, effective for articles which are entered, or withdrawn from warehouse for consumption on and after the date at the head of such latter column:

Item in TSUS as Modified by Annex I	Rates of duty, effective on and after October 1,—			
	1978	1979	1980	1981
946.02	Free	Free	Free	Free
946.14	2.3¢ per lb.	1.5¢ per lb.	1.5¢ per lb.	1.5¢ per lb.
946.42	4.5% ad val.	3% ad val.	3% ad val.	3% ad val.
946.44	8% ad val.	5% ad val.	4.4% ad val.	4.4% ad val.
946.46	7% ad val.	4% ad val.	4% ad val.	4% ad val.
946.50	1% ad val.	1% ad val.	1% ad val.	1% ad val.
946.52	11% ad val.	8% ad val.	5.6% ad val.	5.6% ad val.
946.54	8% ad val.	8% ad val.	8% ad val.	8% ad val.
946.56	3.6¢ per sq. ft.	2.2¢ per sq. ft.	2¢ per sq. ft.	2¢ per sq. ft.
946.58	Free	Free	Free	Free
946.60	4.2¢ per sq. ft.	3.4¢ per sq. ft.	2.6¢ per sq. ft.	2¢ per sq. ft.
946.62	Free	Free	Free	Free
946.64	8% ad val.	5% ad val.	4.4% ad val.	4.4% ad val.
946.66	9.5% ad val.	6.5% ad val.	5% ad val.	5% ad val.
946.68	9.5% ad val.	6.5% ad val.	5% ad val.	5% ad val.

(T.D. 78–387 through T.D. 393)

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involed are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

Dated: October 17, 1978.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 78-387)

Carrier Control; Diving Support Work Barge Operating in U.S. Waters

Date: October 7, 1976
File: VES–3–06–R:CD:C
101925 HR

DEAR ——: In your letter of December 2, 1975, you request advice concerning the proposed operation of a diving support work barge in U.S. waters. You state that the barge will be constructed in a foreign shipyard, towed to the United States and then used primarily in support of diving operations in the construction, maintenance, repair and inspection of offshore petroleum-related facilities.

While there is no requirement in the laws administered by the Customs Service to the effect that such vessel need obtain American registry in order to operate in U.S. waters, whether or not such registry can be obtained is a question which should be addressed to the Merchant Vessel Documentation Division, U.S. Coast Guard. It is clear, though, that a foreign-built vessel may not engage in the coastwise trade of the United States. Generally speaking, coastwise trade involves the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws. All points within and the territorial waters surrounding the United States and nearly all the territories and possessions thereof are embraced within those laws.

Title 46, United States Code, section 883, prohibits (with certain exceptions not relevant here) the transportation of merchandise between points in the United States in a foreign-flag vessel, a foreign-built vessel, or a vessel which at one time has been under foreign flag or ownership. Section 289 of title 46 prohibits the transportation of passengers between points in the United States on a foreign vessel.

However, not every movement between points in the United States is deemed to be a transportation within the meaning of the coastwise laws. We will advise you of the permissibility of the proposed operations in U.S. waters by this foreign-built diving support work barge in the order in which you presented them. It is suggested, though, that the appropriate office of the Coast Guard be contacted in order to ascertain whether any laws or regulations administered by that agency, other than those relating to vessel documentation, would be applicable in this matter.

(1) The Customs Service has held that the sole use of a vessel in laying pipe is not a use in the coastwise trade of the United States, even when the pipe is laid between two points in the United States embraced within the coastwise laws. Further, since the use of a vessel in pipelaying is not a use in the coastwise trade, a foreign-built vessel may carry the pipe which it is to lay between such points. It is the fact that the pipe is not landed but only paid out in the course of the pipelaying operation which makes such operation permissible.

However, the transportation of pipe by any vessel other than a pipelaying vessel to a pipelaying location at a point within U.S. territorial waters would be considered coastwise trade and would therefore have to be accomplished by a vessel meeting the statutory requirements entitling it to engage in such trade.

(2) Similarly, the Customs Service is of the opinion that for the purpose of the coastwise laws there is no distinction to be made between repairing pipe and the laying of new pipe. Therefore, the sole use of the work barge in repairing pipe is not a use in the coastwise trade, and in view of the unique characteristics of pipelaying operations which take them out of the purview of the coastwise laws, the transportation of pipe and repair materials by the work barge, to be used by the crew of the work barge in the repair of the pipeline, is also an activity that is not prohibited by the coastwise laws.

(3) Although the installation of anodes on a subsea pipeline or offshore drilling platform may have more of a preventative than restorative effect, such installation is considered to be in the nature of a repair and thus not a use of the vessel in the coastwise trade. However, since the installation of a preventative substance is an intrinsically foreseeable operation, the transportation of anodes to the operational location within United States waters must be accomplished by a vessel entitled to engage in the coastwise trade.

(4) The transportation of pipeline burial tools by the work barge for use by the crew of the work barge to accomplish the pipelaying operations is not an activity prohibited by the coastwise laws since such tools are considered to be part of the legitimate equipment of that vessel.

Since a foreign-built work barge may engage in the laying and repairing of pipe in territorial waters, in our opinion, the use of the vessel in the installation of pipeline connectors to offshore drilling

platforms and subsea wallheads is likewise not a use in the coastwise trade. In addition, the transportation of pipeline connectors to be installed by the crew of the work barge incidental to the pipelaying operations of the work barge is not an activity prohibited by the coastwise laws.

(6) The Customs Service is of the opinion that the sole use of a vessel in effecting underwater repairs to offshore or subsea structures is not considered a use in coastwise trade. Further, the transportation by the vessel of such materials and tools as are necessary for the accomplishment of the mission of the vessel (i.e., materials to be expended during the course of the underwater inspection and repair operations and tools necessary in such operations) for use by the crew of the vessel is not, generally speaking, an activity prohibited by the coastwise laws since such transportation is incidental to the vessel's operations.

However, while materials and tools, as described above, which are necessary for the accomplishment of the mission of the vessel are not considered merchandise within the meaning of section 883, any article which is to be installed and therefore, in effect, landed at an offshore drilling platform is normally considered merchandise. We are of the opinion that if the necessity for the repair of, or the installation of repair materials on to, the underwater portions of the drilling platform is foreseen and requires a repair material or component of more than de minimis value (such as a structural member), the transportation to the repair site must be effected by a vessel entitled to engage in the coastwise trade. Nevertheless, in view of the nature of these underwater operations, a vessel engaging in the inspection and repair of offshore or subsea structures may carry with it repair materials of de minimis value or materials necessary to accomplish unforeseen repairs, provided that such materials are usually carried aboard the vessel as supplies.

In summary, none of the aforementioned operations of the diving support work barge in U.S. waters, as proposed, would be considered a use in the coastwise trade provided such barge does not take onboard passengers or merchandise at one point within these waters and discharge the passengers or merchandise at another such point. Crewmembers, including technicians and divers, necessary in the vessel's inspection, installation, and repair operations, are not considered passengers, nor are construction personnel who are on the barge in connection with its business. However, persons transported on the barge between points embraced within the coastwise laws who are not connected with the operation, navigation, ownership, or business of the barge are considered passengers within the meaning of the coastwise laws. Legitimate equipment and stores of the barge for its use are not considered merchandise within the meaning of section 883. However, articles transported on the barge between points embraced within the coastwise laws which are not legitimate stores and equipment of the barge, other than pipe laden on board to be paid out in the course of operations, pipeline connectors, pipeline repair materials, and the other repair marerials specified above, are subject to forfeiture under section 883.

It should be emphasized that the transportation of persons or materials as described above takes on a wholly different character if it results in the delivery of such persons or materials to a subsea or offshore structure, such as a drilling platform, for use by such structure. For example, while the transportation of repair materials by the work barge for use by its crew in effecting repairs on or from the barge, or in its service capacity underwater, is not prohibited by the coastwise laws, the delivery of such materials or persons to an offshore drilling platform to effect repairs thereon would be a transportation of something other than the legitimate equipment or crew of the work barge, and as such, would have to be accomplished by a vessel entitled to engage in the coastwise trade.

(7) The use of a vessel in the transportation of "salvaged" materials from offshore drilling platforms or pipelines in U.S. waters, other than pipe being retrieved incidental to a pipeline repair operation, would be deemed a use in the coastwise trade, and would therefore have to be accomplished by a vessel entitled to engage in the coastwise trade.

(8) The use of a vessel in the transportation of machinery or production equipment to an offshore production platform would be deemed a use in the coastwise trade, and would therefore have to be accomplished by a vessel entitled to engage in the coastwise trade. However, the sole use of the diving support work barge in lifting and depositing heavy loads at a fixed site in the territorial waters of the United States is not considered coastwise trade and such activity would not be prohibited by the coastwise laws. Further, the mere movement of the work barge incidental to the lifting and depositing of heavy loads at the site of the lifting would not be deemed coastwise trade.

(9) As was just stated, with regard to the transportation of machinery or production equipment to an offshore production platform, the movement of workover rigs from one production platform to another would be considered to be coastwise transportation, but the mere lifting and depositing of such rigs by the crane of the work barge, for transportation on a vessel entitled to engage in the coastwise trade, would not of itself be considered a use in the coastwise trade.

(10) The use of a vessel in the transportation of a wellhead assembly to a location on the seabed within U.S. waters would be deemed a use in the coastwise trade. At the same time, though, the sole use of a vessel in the installation of a wellhead assembly at a location within U.S. waters, after transportation of such assembly by a vessel entitled to engage in the coastwise trade, is not considered a use in coastwise trade, nor is the sole use of a vessel in servicing wellheads. The transportation of wellhead equipment, valves, and valve guards to be installed on an already existing wellhead assembly in the servicing capacity of the work barge by the crew of the work barge is not an activity prohibited by the coastwise laws, provided that such materials are of de minimis value or necessary to accomplish unforeseen repairs or adjustments and are usually carried aboard the work barge as

supplies. On the other hand, if the necessity for specific wellhead equipment of other materials of more than de minimis value is foreseen, such transportation to the diving site must be effected by a vessel entitled to engage in the coastwise trade.

The laws on entrance and clearance of vessels are applicable to movements of the diving support work barge to, from and between points in U.S. waters, with specific requirements depending on whether the vessel is under U.S. or foreign flag. We will be happy to discuss such requirements when we are made aware of the intended flag of registry of the work barge.

You state that the work barge will be supplied by crewboat or helicopter. Further information about the helicopters, especially their registry, is required before we can rule on the applicability of the air cabotage law (49 U.S.C. 1508(b)). The navigation laws, on the other hand, are fully applicable to supply vessels operating within U.S. territorial waters. Accordingly, a supply vessel which transports supplies, equipment, and so forth, or crewmembers between points embraced within the coastwise laws of the United States (including the work barge when located at a point within U.S. waters) would be considered as operating in the coastwise trade and would have to meet the statutory requirements entitling it to engage in such trade.

Finally, general headnote 5 of the Tariff Schedules of the United States provides that:

> For the purpose of headnote 1 * * * (e) vessels which are not "yachts or pleasure boats" within the purview of subpart D, part 6, schedule 6, "are not articles subject to the provisions of these schedules."

As the vessel in question is not a yacht or pleasure boat, it would not be treated as an article subject to the provisions of the tariff schedules and would not, therefore, be subject to duty.

This decision is being circulated to all Customs officers to insure uniformity in the administration of the customs and navigation laws.

(T.D. 78-388)

Classification; Hydraulic Cylinders

Date: February 23, 1978
File: CLA-2:R:CV:MA
056143 LXL

REGIONAL COMMISSIONER OF CUSTOMS,
New York, N.Y. 10048

DEAR SIR: For some time headquarters has been reviewing the classification of hydraulic cylinders. Concurrently, the International

Trade Commission in the course of its comparability studies under section 608 of the Trade Act of 1974 has been reviewing the same subject. After holding hearings and corresponding with the industry concerned, the International Trade Commission issued the 10th edition of the Tariff Schedules of the United States (1978) (TSUS), with hydraulic cylinders provided for as a seprarate statistical breakout under the provision for nonelectric engines and motors not specially provided for and parts thereof in item 660.85, TSUS.

The National Fluid Power Association (NFPA) suggested that hydraulic cylinders were properly classifiable as linear hydraulic motors. The hydraulic cylinder and piston transmit the hydraulic force to the leverage of any attached machine or equipment; that is, the hydraulic cylinder converts the hydraulic oil pressure built up in the system by the pump into linear motion which does the lifting, pushing, closing, or any other linear work involved.

The American National Standards Institute (ANSI) discusses hydraulic motors and cylinders in the standard designated as "ANSI/B93.2–1971." In item 82.01.100 a hydraulic motor is defined as "a device which converts hydraulic fluid power into mechanical force and motion. It usually provides rotary mechanical motion." Furthermore, in item 82.02.200 of the standards, hydraulic motors (linear) are defined as a "fluid power cylinder providing reciprocating motion." Both American Standard and ANSI suggested that hydraulic cylinders (linear movement), including square-head, tie-rod types, and other types should be included under the designation for hydraulic motors (linear motors) and parts thereof.

Rexroth's Corporation pamphlet "An Introduction to Oil Hydraulics," in its discussion of hydraulic systems places linear motors (hydraulic cylinders) in the class of energy converters which also includes rotary and oscillating motors. In brief, a hydraulic system includes a generator which is normally an electric motor-driven pump; a distributor which includes pressure, flow control, and directional control valves, and the "user" which consists of the energy converters and the driven assembly with accessories.

In accordance with the importance placed on hydraulic cylinders as energy converters, we find that all hydraulic cylinders and parts within the ANSI standards are classifiable under the provision for other nonelectric engines and motors not specially provided for, and parts thereof, in item 660.85, TSUS.

(T.D. 78–389)

Classification of Bicycle Parts under Public Law 95–161

Date: March 10 1978
File: R:CV:MA
056630 c

To: Mr. Donovan F. Working, District Director of Customs,
Mann Road & Santa Maria, Laredo, Tex. 78040;
attention: Mr. Ramey.

From: Chief, Manufacturers Classification Branch.

Subject: Bicycle parts; Public Law 95–161.

Reference is made to recent telephone conservations with Mr. Ramey of your staff regarding the tariff classification of bicycle parts imported after the passage of Public Law 95–161 on November 8, 1977.

It is headquarters position that on or after November 8, 1977, all those bicycle items mentioned in section 3(a) and 3(b) of the law, entered, or withdrawn from warehouse, for consumption, will be entitled to free entry (until June 30, 1980).

Those caliper brakes, drum brakes, three-speed hubs incorporating coaster brakes, three-speed hubs not incorporating coaster brakes, click-twist grips, click-stick levers, multiple freewheel sprockets, and generator lighting sets for bicyles which were entered or withdrawn after December 31, 1976, and before November 8, 1977, are entitled to free entry provided a request is made in the proper manner within the specified time period.

Coaster brakes, cotterless-type crank sets, rims and parts of all the items named in this paragraph and the preceding paragraph and parts of bicycles consisting of sets of steel tubing cut to exact length, each set having the number of tubes needed for the assembly (with other parts) into the frame and fork of one bicycle, are not entitled to free entry unless entered or withdrawn on or after November 8, 1977.

(T.D. 78–390)

Duty Assessment: Proper Classification and Basis of Appraisement of Aircraft Engines and Related Items; Use of Export Value When Selling Price Does Not Reflect Research and Development Costs; T.D. 54860(4) Revoked.

Date: March 25, 1977
File: R:CV:V LLR
540410

DEAR ——: This is in reference to your letter of December 10, 1974, and supplemental correspondence dated March 7, 1975, and June 25,

1976, which requested a ruling from headquarters in connection with the classification and basis of appraisement of certain (company X) (model) engines and related items. The merchandise was imported through the port of Los Angeles, Calif., during the calendar years of 1971, 1972, and 1973.

The merchandise, sometimes referred to as a propulsion system "ship set," is comprised of three engines, three sets of accessories, three sets of exhaust equipment, one fuselage pod, and two wing pods. From this description we understand that the merchandise consists of engines proper and supporting articles therefor. It is your position that the "ship set" does not comprise an entirety for classification and appraisement purposes; however, you express no opinion as to which item number in the Tariff Schedules of the United States (TSUS) the merchandise should be classified under.

The District Director of Customs, Los Angeles, Calif., has expressed the opinion that the merchandise is classifiable under the provision for nonpiston-type engines in item 660.46, TSUS, with duty at the rate of 5 percent ad valorem. You contend that the articles comprising a "ship set" are separate and distinct articles for tariff purposes and should be classified accordingly.

It is our position that the "ship set" does not constitute an entirety. However, we do believe that each engine proper and its supporting articles function as a single power unit and are, accordingly, classifiable under the provision for nonpiston-type engines in item 660.46, TSUS, as classified by the District Director.

It is your contention that export value, section 402(b), Tariff Act of 1930, as amended, is the proper basis of appraisement. It is the position of the District Director that constructed value, section 402(d) of the Tariff Act, is the proper basis of appraisement. In your submission of December 10, 1974, you state that (company Y) contracted to purchase from (company X) a number of (model) propulsion systems for installation in (company Y's) aircraft. This contract stated a sales price which was negotiated at arm's length. In support of your contention that export value is the appropriate basis of appraisement you state that other nonrelated purchasers, for example (names of other companies), purchased the propulsion systems on the same basis and at the same price. Your supplemental submission dated June 25, 1976, contained a copy of a letter, also dated June 25, 1976, directed to you from the law firm of (name) New York, N.Y. You indicate that this law firm is the U.S. counsel for (company X). The letter contains representations that the contracts governing the sale of (model) engines to the unrelated airlines were entered into prior to the date of exportation of the first (model) engine to (company Y).

The final selling prices stated in the contract between (company Y) and (company X) were arrived at in accordance with a formula relating to the price of the basic engine plus additions for material and labor increases in England and customer-demanded modifications. Certain (company Y) manufactured components entitled to duty-free entry under item 807.00 TSUS, were not included in the price formula referred to above. Nevertheless, the price paid by the other purchasers for a spare engine was identical to the price of the original equipment engines sold to (company Y) by (company X), irrespective of the fact that the components supplied by (company Y) were being supplied by (company X).

The District Director of Customs, Los Angeles, Calif., in his memorandum dated January 10, 1975, takes the position that export value does not exist. In support of this position he notes that (company X) received approximately £100 million worth of research and develop ment from the corporation bearing the same name and which went into bankruptcy. It is the District Director's position that the research and development expenditures of the bankrupt (company X) constitute a dutiable assist to the current (company X), which received the research and development for the sum of £1. He concludes that the merchandise is not "freely sold * * * or offered for sale" within the meaning of the Tariff Act since it could not have been manufactured or sold without the benefits of the "old" development costs which are not reflected in the current selling price. In support of this position the District Director cites *Border Brokerage Co.*, v. *United States*, 65 Cust. Ct. 739, R.D. 11725 (1970), aff'd, 66 Cust Ct. 639, A.R.D. 288 (1971); *Ford Motor Co.* v. *United States*, 29 Cust. Ct. 553, A.R.D. 9 (1952); C.S.A. No. 45; and T.D. 54860(4).

We understand your position to be that when an item is "freely sold," as that term is defined in section 402(f)(1)(A) of the tariff Act, to all purchasers at wholesale, Customs cannot look behind the invoice price. We agree with your position.

In C.S.A. No. 45 (C.I.E. 1186/64) the foreign manufacturer apparently required the various importers to supply felt inserts which were mounted on the aluminum marking shell which was subsequently exported. The labor cost for mounting was included in the manufacturer's sales price, but the price for the material was not included in the sales price. Headquarters held that export value could not be used as the basis of appraisement. We agree with the conclusion reached in this prior decision, but for the reasons stated below, we do not concur in the support relied upon in making the decision. Headquarters relied on T.D. 54860(4) in reaching its conclusion. T.D.

54860(4), which is the final authority relied upon by the District Director states:

> Export value, either section 402a(d) or section 402(b) disapproved as a possible basis of appraisement for articles the selling price for which does not reflect the inclusion of outlays for product development work such as engineering, pattern or design work, drafting, and the like, whether furnished to the foreign producer on a "no cost" basis, billed separately by him, or otherwise accounted for.

Headquarters, after consideration of the principle cited above, is of the opinion that T.D. 54860(4) is not a correct statement of the Customs law, and, therefore, it is hereby overruled. A review of the facts of the instant case manifests the impropriety of this old pronouncement. The following facts now confront us: Research and development is supplied to a foreign manufacturer at a nominal cost by its predecessor company which had been forced into bankruptcy; neither the foreign manufacturer nor its predecessor company were related to any of the U.S. importers; the foreign manufacturer uses the research and development to produce an article which it freely offers for sale for exportation to the United States to all who wish to purchase it; and, the foreign manufacturer does not include any part of the research and development cost in its freely offered price. It is our opinion that the facts of this case clearly set forth the type of sale envisioned by section 402(b) and section 402(f)(1)(A) of the Tariff Act. There is a price at the time of exportation, at which the imported merchandise is freely sold to all purchasers at wholesale for export to the United States, in the usual wholesale quantities and in the ordinary course of trade. Under these circumstances section 402(b) affords no opportunity to look behind the price. Accordingly, as the engines imported by the various airlines appear to be virtually identical to the merchandise imported by (Company Y) export value would, in our opinion, be the appropriate basis of appraisement.

By copy of this letter, we are advising the District Director of Customs, Los Angeles, Calif., of our decision in this matter.

(T.D. 78-391)

Generalized System of Preferences; Application to Calculator-Clock Combination

Date: April 12, 1978
File: R:CV:S
055531 DAL

DEAR ——: This is in reference to your letter of February 16, 1978, in which you request rulings as to: The tariff classification and duty

rate applicable to a calculator-clock combination manufactured in Taiwan by Cal-Comp; the application of the generalized system of preferences (GSP) to this product; and the special marking requirements for clock movements imposed by the Tariff Schedules of the United States (TSUS).

The sample you submitted (which is enclosed in a vinyl carry case) is a battery-operated electronic device incorporating a calculator, clock, stopwatch, and alarm in the same chassis. The calculator and time functions are both displayed on the same LCD readout panel, and the display selection is controlled by various buttons and switches on the face of the instrument. The clocks in constant operation regardless of the display switch setting, and the calculator is capable of addition, subtraction, multiplication, division, and several other operations. This article appears to be of a type suitable for home, or nonspecialized office use.

When the carry case, which appears to be specifically fitted for this article, is imported with the calculator-clock, this combination results in an entirety classifiable under the provision for "calculating machines specially constructed for multiplying and dividing," in item 676.20, TSUS. Since the article in question contains a clock movement, however, its rate of duty is governed by headnote 5, subpart 2E, schedule 7, TSUS, which provides that:

> " * * * in determining the duties on the combination article [(calculator-clock)] the movement * * * shall be constructively separated therefrom and assessed with the same rate as would have applied if it had been imported separately * * * ."

In your letter you stated that the clock movement was valued f.o.b. $4.80, and in a subsequent telephone conversation you indicated that the calculator-clock was being freely offered on the open market to parties wholly unrelated to yourself at the f.o.b. Taiwan value of the merchandise. Under these facts, it would appear that the merchandise would be appraised at the Taiwan f.o.b. price and that the clock movements would therefore be dutiable at the rate of 37.5 cents each plus 16 percent ad valorem (no jewels), as prescribed by item 720.14, TSUS.

Articles entered under item 676.20, TSUS, although normally dutiable at 5 percent ad valorem, are eligible for GSP treatment. At issue in the instant case is whether the 35-percent value-added requirement should be applied with respect to the total value of the calculator-clock or whether it should be applied solely to that amount which represents the pro rata value of the calculator portion of the merchandise. Since headnote 5 requires the constructive segregation of the calculator and the clock movement for duty assessment purposes, it is the opinion of this office that the calculator portion of the imported article

will qualify for GSP treatment if the sum of the direct costs of processing operations performed and the value of materials produced in Taiwan is not less than 35 percent of the pro rata value of the calculator portion of the merchandise.

With respect to the marking requirements in this case, section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides generally that all articles of foreign origin imported into the United States must be legibly and conspicuously marked to indicate the country of origin to an ultimate purchaser in the United States. As you know, the calculator-clock combination that you plan to import must also be marked in accordance with the special marking requirements of schedule 7, part 2E, headnote 4, TSUS. You state that the clock movement will be marked with the country of manufacture, name of maufacturer or purchaser, and "no (0) jewels." The calculator case itself will be marked on the backside with the name of the country of manufacture. These markings would appear to satisfy the special marking requirements. Moreover, the country of manufacture marking on the back of the calculator would also appear to satisfy the country of origin marking requirements of 19 U.S.C. 1304. The carry case which accompanies the calculator-clock combination must be separately marked to indicate its country of origin, as required by 19 U.S.C. 1304.

(T.D. 78-392)

Power of Attorney; Whether Required in Order To Perform Services Physically Facilitating the Entry and Movement of Merchandise for a Customhouse Broker

Date: May 11, 1978
File: ENT-1-01 R:E:E
305880 K

DEAR ——: This refers to your letter of April 10, 1978, requesting our opinion on your contemplated employment of an individual who is a licensed customhouse broker in Los Angeles but who does not have a power of attorney from you or from importers who have granted you their power of attorney (CF 5291).

You describe his activities as follows: For commercial importations he will open and close merchandise for Customs inspection, mark the country of origin on merchandise, and repack it in separate containers for multiple entries. Your company, as the consignees' customhouse broker, will apply for and file required documents in the name of the consignees.

For noncommercial importations, your company will secure all the necessary declarations and entry forms, and will contact the individual you propose to employ to perform the labor for Customs inspection.

In your opinion, this individual would not require a Customs power of attorney as he would only provide messenger service and labor on your behalf and, under the stated facts, would not even require a customhouse broker's license.

An individual who engages in the activities you describe, in our opinion, would not be considered to be transacting Customs business on behalf of others, since he would not be filing, endorsing, or signing any documents or declarations on behalf of the consignee. He would merely be physically facilitating the entry and movement of merchandise. Consequently, he would require neither a customhouse broker's license nor a Customs power of attorney on CF 5291.

We suggest that you furnish this individual, and the District Director at Los Angeles, with a written description of the duties he is authorized to perform on your behalf. We are sending the District Director there a copy of this letter for his information.

(T.D. 78-393)

Customs Bonded Warehouses; Whether Certain Operations Constitute a Manipulation

Date: May 25, 1978
File: WAR-1-R:CD:D
208811 WR

DISTRICT DIRECTOR OF CUSTOMS,
Norfolk, Va. 23510

Re: Memorandum WAR-ADD:DEW of February 15, 1978, requesting ruling on whether certain operations constitute a manipulation.

DEAR SIR: You requested our advice whether the following operations constitute a manipulation within the meaning of section 562 of the Tariff Act of 1930, as amended (19 U.S.C. 1562): Inspecting, labeling, inventorying, checking, and starting imported construction-equipment in a bonded warehouse.

The warehouse proprietor, who operates a storage-manipulation warehouse, wants to perform the operations on the imported construction equipment without Customs supervision. The proprietor wants to perform the operations in order to fix any damage to the equipment that occurred during its shipment, to maintain physical control over

the equipment, and to carry out preventive maintenance on the equipment.

Section 562 specifically refers to cleaning, sorting, and otherwise changing condition of merchandise as coming within the concept of manipulation. The warehouse proprietor intends to inspect the imported equipment for shipping damage and then fix any damaged parts. The proprietor also intends to attach tages to each piece of the imported equipment for inventory purposes. Finally, the proprietor intends to conduct preventive maintenance on each piece of the equipment by insuring that the equipment's fluid levels are maintained and and that each piece of equipment is operated to prevent rust. Repairing minor damage clearly changes the condition of the repaired article. Attaching identification tags to equipment come within the concept of sorting articles. Checking fluid levels and operating the equipment as a means of preventive maintenance falls within the concept of cleaning the equipment. Accordingly, the proposed operations are manipulations within the meaning of section 562.

Section 19.8 of the Customs Regulations (19 CFR 19.8) requires those operations to be performed under the supervision of a Customs warehouse officer. Section 161.1 of the Customs Regulations (19 CFR 161.1) establishes general guidelines governing the character and extent of the required supervision. Since section 19.8 does not specifically require the Customs warehouse officer to exercise direct and continuous supervision over each operation, you have the authority to determine whether occasional verification of the operations by the Customs warehouse officer will insure proper enforcement of the law and protection of the revenue.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1212)

EXCELSIOR IMPORT ASSOCIATES, INC. v. THE UNITED STATES, No. 78–3

(— F. 2d —)

1. CLASSIFICATION—PRESUMPTION OF CORRECTNESS

Customs Court judgment, that importer had not overcome the presumption of correctness of the classification of certain gauze shirts imported from India under TSUS 382.00, and had not proven its claimed classification (TSUS 382.33) correct, affirmed.

2. EVIDENCE—WEIGHT AND SUFFICIENCY THEREOF

Uncorroborated testimony of a witness may establish a *prima facie* case only when it is uncontradicted, or is entitled to greater weight than the evidence of the other party.

3. ID.—COMMON OR COMMERCIAL DESIGNATION

In the absence of evidence by the importer that "ornamented" textile articles, as used in the TSUS, had a commercial designation or trade sense different from the common meaning or plain understanding of that phrase, government witness testimony that the tucks were "ornamental" was sufficient.

United States Court of Customs and Patent Appeals, October 12, 1978

Appeal from United States Customs Court, C.D. 4726

[Affirmed.]

Shaw and Stedina, attorneys of record, for appellant, *Charles P. Deem*, of counsel.

Barbara Allen Babcock, Assistant Attorney General, *David M. Cohen*, Chief Customs Section, *Glenn E. Harris, Laura D. Millman* for the United States.

[Oral argument on October 2, 1978 by Charles P. Deem for appellant and by Glenn E. Harris for appellee]

Before MARKEY, Chief Judge, RICH, BALDWIN, MILLER, Associate Judges, and FORD,* Judge.

PER CURIAM.

Appeal from the judgment of the U.S. Customs Court, 79 Cust. Ct. 144, C.D. 4726, 444 F. Supp. 780 (1977). The court held that [1] plaintiff (appellant) had not overcome the presumption of correctness of the classification of the imported shirts under TSUS item 382.00, and had not proven its claimed classification (TSUS 382.33) correct.

Upon thorough consideration of the record, briefs, and oral arguments, we are in full agreement with the opinion of Judge Boe and adopt it as our own adding only the following comments.

Appellant's contention, that error occurred in the characterization of its witness' testimony as "unsupported personal opinion," is without merit. [2] Uncorroborated testimony of a witness may establish a *prima facie* case only when it is uncontradicted, or is entitled to greater weight than the evidence of the other party. *See United States* v. *Ignaz Strauss & Co., Inc.*, 37 CCPA 48, C.A.D. 418 (1949); *United States* v. *William Shaland*, 30 Cust. Ct. 575, A.R.D. 12 (1953).

Equally without merit are appellant's contentions that the Government's witnesses were incompetent to testify respecting the Indian gauze shirt trade and that the Government did not prove the shirts "ornamented articles" in an accepted trade sense. Government witness Sloan testified that consumers did not differentiate between Indian and American fabrics in deciding whether tucks enhanced a garment's appearance, and that most purchases are made on the basis of appearance alone, regardless of fabric. That uncontradicted testimony rendered irrelevant the status of the shirts in the Indian gauze shirt trade. The well-established rule respecting trade sense is that "before the plain understanding of a term can be deviated from it must be shown by plenary proof to have a different import in trade and commerce." *United States* v. *Wells, Fargo & Co.*, 1 Ct. Cust. Appls. 158, 161, T.D. 31211 (1911). The Government relied on the plain understanding of the term "ornamented" articles. [3] Thus, appellant had the burden of proving that "ornamented" textile articles, as used in the TSUS, had a commercial designation or trade sense different from the common meaning or plain understanding of that phrase. It introduced no evidence in support of that burden. Government witness testimony that the tucks were "ornamental" was therefore sufficient.

The judgment is *affirmed.*

*The Honorable Morgan Ford, Associate Judge, U.S. Customs Court, sitting by designation.

Notices

Appeal to United States Court of Customs and Patent Appeals

Appeal 79–1.—Indian Head, Inc. *v.* United States.—WHITE WOOL YARN—YARNS OF WOOL, OTHER—YARNS OF WOOL, COLORED—TSUS. Appeal from C.D. 4758.

In this case certain white wool yarn was classified under item 307.64, Tariff Schedules of the United States, as "Other" yarns of wool, and assessed with duty at 30 cents per pound plus 15 percent ad valorem. Plaintiff (appellant) claimed that the yarn was entitled to duty-free entry under item 307.60 as "Yarns of wool, colored, and cut into uniform lengths of not over 3 inches, in immediate packages or containers not over 6 ounces in weight including the weight of the immediate package or container." The court concluded that the yarn was not "colored", as that term is defined in headnote 2(b), schedule 3, TSUS, and not entitled to duty-free status pursuant to item 307.60, *supra.* The action was dismissed.

It is claimed that the Customs Court erred in holding that the imported merchandise is properly classifiable under item 307.64, *supra;* in holding that the merchandise did not fall within the definition of "colored" in headnote 2(b), schedule 3; in failing to hold that the merchandise was properly classifiable under item 307.60, *supra.*

Petition for Rehearing before the United States Court of Customs and Patent Appeals

SEPTEMBER 1, 1978

Appeal 77-26.—United States *v.* Paul M. W. Bruckmann.
Appeal 77-30.—Paul M. W. Bruckmann *v.* United States.

PARTS OF GAS LAMPS: STEMS AND TOPS—ILLUMINATING ARTICLES AND PARTS THEREOF, OTHER—INCANDESCENT LAMPS, PARTS OF—TSUS—SUMMARY JUDGMENT.—C.D. 4702 reversed August 17, 1978 (C.A.D. 1211). Petition by Paul M. W. Bruckmann.

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